



1997 SENATE BILL 351

November 12, 1997 - Introduced by JOINT COMMITTEE ON INFORMATION POLICY.
Referred to Joint committee on Information Policy.

1 **AN ACT to renumber and amend** 196.219 (1) and 196.219 (4m); **to amend**
2 196.219 (2) (a), 196.219 (2) (d), 196.219 (2m) (a), 196.219 (3) (intro.) and (a),
3 196.219 (3) (e), 196.219 (3) (em), 196.219 (3) (f), 196.219 (3) (h), 196.219 (3) (m),
4 196.219 (4), 196.219 (5) and 196.499 (1); and **to create** 196.199, 196.219 (1) (b),
5 196.219 (4m) (b) and 196.43 (3) of the statutes; **relating to:** enforcement of
6 interconnection agreements by the public service commission, protections for
7 users of certain telecommunications services, granting rule-making authority
8 and providing a penalty.

Analysis by the Legislative Reference Bureau

Enforcement of interconnection agreements

Under the Federal Telecommunications Act of 1996, certain persons that are regulated as telecommunications utilities under state law and that provide local telephone exchange services must enter into agreements with other providers of telecommunications services in which the other providers are allowed to connect their telecommunications networks to the telecommunications utilities' networks. The public service commission (PSC) is required to approve such agreements, which are called "interconnection agreements", by determining whether the agreements satisfy certain federal requirements.

This bill allows the PSC to promulgate rules that require an interconnection agreement to include alternate dispute resolution procedures. The bill also allows a party to an interconnection agreement that is approved by the PSC to request a declaratory ruling from the PSC regarding the meaning of any provision of the agreement.

In addition, the bill establishes procedures for enforcing interconnection agreements that are approved by the PSC. Under the bill, a party to such an agreement may file a complaint with the PSC alleging that another party has failed to comply with the agreement. Before such a party may file a complaint, the party must first give the other party a maximum of 5 business days to resolve the alleged failure to comply. If a person who is not a party to an interconnection agreement files a complaint with the PSC that the PSC determines may involve a failure to comply with an interconnection agreement, the PSC must notify the parties to the agreement about the alleged failure to comply. If the parties resolve the alleged failure to comply to the satisfaction of the PSC within a maximum of 5 business days, the PSC must dismiss the complaint with respect to the issues that involve the alleged failure to comply.

After investigating a complaint, the PSC may, after notice and an opportunity for hearing, order a party to comply with the interconnection agreement. The PSC must issue such an order within 120 days after a complaint is filed, unless the parties to the proceeding consent to a longer time period that is approved by the PSC. Before issuing such an order, the PSC may issue an interim order that requires a party to the agreement to take action or refrain from taking action that is related to complying with the agreement. A person who seeks an interim order must satisfy certain requirements, including showing, if the person is a party to the interconnection agreement, that the alleged failure to comply with the agreement has a substantial adverse impact on the party's ability to provide telecommunications services to its customers. A party against whom an interim order is issued may request the PSC to review the order. If the PSC determines, upon review, that a person who sought an interim order was not entitled to the order, the PSC may order that person to pay damages that were sustained because of the interim order.

The bill also allows a court to impose forfeitures against a party that fails to comply with an interconnection agreement. The amount of a forfeiture depends on certain factors, including whether the failure to comply is wilful or has resulted in any economic loss to an injured party or any economic gain to the party who failed to comply. In addition, the PSC may directly impose a forfeiture against a party to an interconnection agreement who files a complaint or answer to a complaint that is frivolous, is intended to delay the implementation of an interconnection agreement or violates certain other prohibitions.

Protections for users of telecommunications services

Under current law, certain persons that are regulated as telecommunications utilities are required to provide certain protections to persons, including other telecommunications providers, who use their services, products or facilities. Such telecommunications utilities may not engage in certain prohibited practices related to connecting their telecommunications networks to the networks of other telecommunications providers and to providing telecommunications services to their customers. If the PSC finds that a telecommunications utility has violated these requirements, a person who is injured by the violation may bring an action in court to recover damages or obtain injunctive relief.

Under this bill, telecommunications providers who offer local exchange telecommunications services must provide the same protections and are subject to the same prohibitions that apply to telecommunications utilities. In addition, a person who is injured by a telecommunications utility or provider who violates these requirements may bring an action in court for damages or injunctive relief without a finding of violation by the PSC. Also, the bill allows the attorney general, upon the request of the PSC, to bring an action in court to require a telecommunications utility or provider to compensate a person for the pecuniary losses suffered because of a violation of these requirements.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 196.199 of the statutes is created to read:
- 2 **196.199 Interconnection agreements. (1) DEFINITION.** In this section,
- 3 “interconnection agreement” means an interconnection agreement that is subject to
- 4 approval by the commission under 47 USC 252 (e).
- 5 **(2) COMMISSION’S POWERS.** (a) The commission has jurisdiction to approve and
- 6 enforce interconnection agreements and may do all things necessary and convenient
- 7 to its jurisdiction.
- 8 (b) The commission may promulgate rules that require an interconnection
- 9 agreement to include alternate dispute resolution provisions.
- 10 **(3) ENFORCEMENT.** (a) Upon the filing of a complaint under this paragraph by
- 11 a party to an interconnection agreement or of a complaint under any other provision
- 12 of this chapter by any other person that the commission determines may involve a
- 13 failure to comply with an interconnection agreement, the commission may
- 14 investigate whether a party to the agreement has failed to comply with the
- 15 agreement. If, after an investigation, the commission finds that a party has failed
- 16 to comply with an interconnection agreement, the commission shall, after notice and

1 opportunity for a hearing, issue an order requiring compliance with the
2 interconnection agreement. The commission shall issue the order, subject to par. (e),
3 no later than 120 days after the filing of the complaint, unless all of the parties to the
4 proceeding consent to a longer time period that is approved by the commission.

5 (b) 1. Before initiating an investigation under par. (a) based on a complaint filed
6 by a person that is not a party to an interconnection agreement, the commission shall
7 notify the parties to the agreement about the alleged failure to comply with the
8 agreement. If the alleged failure to comply is resolved to the satisfaction of the
9 commission within 5 business days after the parties receive notice under this
10 subdivision, or within a shorter period of time specified by the commission in the
11 notice, the commission shall dismiss the complaint with respect to the issues that
12 involve the alleged failure to comply.

13 2. No party to an interconnection agreement may file a complaint under par.
14 (a) unless the party has first notified the party who is the subject of the complaint
15 about the alleged failure to comply and given that party an opportunity to resolve the
16 alleged failure to comply to the satisfaction of the complaining party within 5
17 business days, or a shorter period of time approved by the commission, after
18 receiving the notice. The commission shall promulgate rules establishing standards
19 and procedures for approving a period of time shorter than 5 business days.

20 (c) No party to an interconnection agreement may file a complaint under par.
21 (a) or file an answer to such a complaint unless there is a nonfrivolous basis for doing
22 so. A party to an interconnection agreement may not file a complaint under par. (a)
23 or file an answer to such a complaint unless, to the best of the party's knowledge,
24 information and belief, formed after a reasonable inquiry, all of the following
25 conditions are satisfied:

1 1. The party's complaint or answer is reasonably supported by applicable law.

2 2. The allegations and other factual contentions in the party's complaint or
3 answer have evidentiary support or, if specifically so identified in the party's
4 complaint or answer, are likely to have evidentiary support after reasonable
5 opportunity for further investigation or discovery.

6 3. The party's complaint is not intended to harass a party to an interconnection
7 agreement.

8 4. The party's complaint or answer is not intended to cause unnecessary delay
9 in implementing an interconnection agreement or create a needless increase in the
10 cost of litigation.

11 (d) If, at any time during a proceeding on a complaint specified in par. (a), the
12 commission determines, after notice and reasonable opportunity to be heard, that a
13 party to an interconnection agreement has filed a complaint or answer in violation
14 of par. (c), the commission may do all of the following:

15 1. Order the party to pay to any party to the interconnection agreement the
16 amount of reasonable expenses incurred by that party because of the filing of the
17 complaint or answer, including reasonable attorney fees.

18 2. Directly assess a forfeiture against the party of not less than \$25 nor more
19 than \$5,000. A party against whom the commission assess a forfeiture under this
20 subdivision shall pay the forfeiture to the commission within 10 days after receipt
21 of notice of the assessment or, if the party petitions for judicial review under ch. 227,
22 within 10 days after receipt of the final decision after exhaustion of judicial review.
23 The commission shall remit all forfeitures paid under this subdivision to the state
24 treasurer for deposit in the school fund. The attorney general may bring an action
25 in the name of the state to collect any forfeiture assessed by the commission under

1 this subdivision that has not been paid as provided in this subdivision. The only
2 contestable issue in such an action is whether or not the forfeiture has been paid.

3 (e) At any time during a proceeding on a complaint specified in par. (a), the
4 commission may, without holding a hearing, order a party to the interconnection
5 agreement to take an action or refrain from taking an action that is related to
6 complying with the agreement upon a showing by any other party to the proceeding
7 of all of the following:

8 1. That there is a substantial probability that, at the conclusion of the
9 proceeding, the commission will find that the party against whom the order is sought
10 has failed to comply with the interconnection agreement.

11 2. For a complaint filed by a party to an interconnection agreement, that the
12 party against whom the order is sought is taking an action or failing to take an action
13 that has a substantial adverse effect on the ability of the complaining party to
14 provide telecommunications service to its customers.

15 3. That the order is in the public interest.

16 (f) The commission may require a bond or other security of a person seeking an
17 order under par. (e) to the effect that the person shall pay the party against whom
18 the order is issued such damages and expenses, excluding attorney fees, in an
19 amount specified by the commission, as that party may sustain by reason of the order
20 if the commission determines under par. (g) that the person seeking the order was
21 not entitled to the order.

22 (g) Within 5 days after receiving an order issued under par. (e), the party
23 against whom the order is issued may request the commission to review the order.
24 Within 30 days after receiving a request under this paragraph, the commission shall
25 determine whether the person who sought the order under par. (e) was entitled to the

1 order and shall terminate, continue or modify the order on such terms as the
2 commission determines are appropriate. If the commission determines that the
3 person was not entitled to the order, the commission may order the person to pay the
4 damages and expenses, excluding attorney fees, sustained, by reason of the order, by
5 the party against whom the order was issued. In making a determination under this
6 paragraph, the commission may consider only the factors specified in par. (e) 1. to 3.
7 based only on information that was available to the commission at the time that the
8 commission issued the order under par. (e).

9 (h) 1. Upon a petition filed by a party to an interconnection agreement approved
10 by the commission, the commission may, after an opportunity for hearing is afforded
11 to each party to the agreement, issue a declaratory ruling with respect to the
12 meaning of any provision of the agreement. A declaratory ruling issued by the
13 commission shall bind the commission and all parties to a proceeding under this
14 paragraph on the statement of facts alleged, unless the ruling is altered or set aside
15 by a court.

16 2. A petition filed under subd. 1. shall identify all of the parties to the
17 interconnection agreement and include a concise statement of facts describing the
18 situation as to which the ruling is requested and the reasons for the requested ruling.

19 3. Within 120 days after receipt of a petition under subd. 1., the commission
20 shall do one of the following:

21 a. Deny the petition in writing and provide a brief statement of the reasons for
22 the denial.

23 b. Hold a hearing on the petition and issue a declaratory ruling in writing.

24 **(4) PENALTIES.** (a) 1. A party to an interconnection agreement, approved by the
25 commission, who has failed to comply with the agreement shall forfeit not more than

1 \$15,000 or, if the failure is wilful, not more than \$40,000, except that if the party is
2 a telecommunications utility that has \$10,000,000 or less in annual gross operating
3 revenues derived from intrastate operations during the last calendar year, as
4 determined under s. 196.85 (2), the forfeiture under this subdivision shall be not
5 more \$10,000. For purposes of this subdivision, each day that a party fails to comply
6 with an interconnection agreement is a separate failure to comply.

7 2. The maximum forfeiture that may be imposed under subd. 1. shall be trebled
8 if either of the following conditions is satisfied and shall be sextupled if both of the
9 following conditions are satisfied:

10 a. The party's failure to comply causes death or life-threatening or seriously
11 debilitating injury.

12 b. The party's failure to comply continues after the party receives written notice
13 of the commission's order requiring compliance with the interconnection agreement.

14 3. In addition to a forfeiture imposed under subd. 1., a party to an
15 interconnection agreement, approved by the commission, who has failed to comply
16 with the agreement shall forfeit an amount equal to not more than 2 times the gross
17 value of the party's economic gain resulting from the failure to comply or not more
18 than 2 times the gross value of the economic loss experienced by the party to the
19 agreement who is injured as a result of the party's failure to comply, whichever is
20 greater.

21 (b) A court shall consider each of the following in determining the amount of
22 a forfeiture under par. (a):

23 1. The appropriateness of the forfeiture to the volume of business of the party
24 that failed to comply with the agreement.

25 2. The gravity of the failure to comply.

1 3. Any good faith attempt to comply with the agreement after the party receives
2 notice of a failure to comply

3 4. Any other factor that the court determines is relevant.

4 **SECTION 2.** 196.219 (1) of the statutes is renumbered 196.219 (1) (intro.) and
5 amended to read:

6 196.219 (1) (title) ~~DEFINITION~~ DEFINITIONS. (intro.) In this section, ~~“consumer”~~;

7 (a) “Consumer” means any person, including a telecommunications provider,
8 that uses the services, products or facilities provided by a telecommunications utility
9 or the local exchange services offered by a telecommunications provider that is not
10 a telecommunications utility.

11 **SECTION 3.** 196.219 (1) (b) of the statutes is created to read:

12 196.219 (1) (b) “Local exchange service” has the meaning given in s. 196.50 (1)
13 (b) 1.

14 **SECTION 4.** 196.219 (2) (a) of the statutes is amended to read:

15 196.219 (2) (a) Notwithstanding any exemptions identified in this chapter
16 except s. 196.202, a telecommunications utility or provider shall provide protection
17 to its consumers under this section unless exempted in whole or in part by rule or
18 order of the commission under this section. The commission shall promulgate rules
19 that identify the conditions under which provisions of this section may be suspended.

20 **SECTION 5.** 196.219 (2) (d) of the statutes is amended to read:

21 196.219 (2) (d) If the commission grants an exemption under this subsection,
22 it may require the telecommunications utility or provider to comply with any
23 condition necessary to protect the public interest.

24 **SECTION 6.** 196.219 (2m) (a) of the statutes is amended to read:

1 196.219 **(2m)** (a) A telecommunications utility or provider shall provide access
2 services under tariff under the same rates, terms and conditions to all
3 telecommunications providers.

4 **SECTION 7.** 196.219 (3) (intro.) and (a) of the statutes are amended to read:

5 196.219 **(3)** PROHIBITED PRACTICES. (intro.) A telecommunications utility ~~may~~
6 ~~not do any of the following~~ with respect to its regulated services or any other
7 telecommunications provider with respect to its offering of local exchange services
8 may not do any of the following:

9 (a) Refuse to interconnect within a reasonable time with another person to the
10 same extent that the federal communications commission requires the
11 telecommunications utility or provider to interconnect. The public service
12 commission may require additional interconnection based on a determination,
13 following notice and opportunity for hearing, that additional interconnection is in
14 the public interest and is consistent with the factors under s. 196.03 (6).

15 **SECTION 8.** 196.219 (3) (e) of the statutes is amended to read:

16 196.219 **(3)** (e) Fail to provide a service, product or facility to a consumer other
17 than a telecommunications provider in accord with the telecommunications utility's
18 or provider's applicable tariffs, price lists or contracts and with the commission's
19 rules and orders.

20 **SECTION 9.** 196.219 (3) (em) of the statutes is amended to read:

21 196.219 **(3)** (em) Refuse to provide a service, product or facility ~~to a~~
22 ~~telecommunications provider,~~ in accord with the that telecommunications utility's or
23 provider's applicable tariffs, price lists or contracts and with the commission's rules
24 and orders, to another telecommunications provider.

25 **SECTION 10.** 196.219 (3) (f) of the statutes is amended to read:

1 196.219 (3) (f) Refuse to provide basic local exchange service, business access
2 line and usage service within a local calling area and access service on an unbundled
3 basis to the same extent that the federal communications commission requires the
4 telecommunications utility or provider to unbundle the same services provided
5 under its jurisdiction. The public service commission may require additional
6 unbundling of intrastate telecommunications services based on a determination,
7 following notice and opportunity for hearing, that additional unbundling is required
8 in the public interest and is consistent with the factors under s. 196.03 (6). The public
9 service commission may order unbundling by a small telecommunications utility.

10 **SECTION 11.** 196.219 (3) (h) of the statutes is amended to read:

11 196.219 (3) (h) To the extent prohibited by the federal communications
12 commission, or by the public service commission under rules promulgated consistent
13 with the factors under s. 196.03 (6), give preference or discriminate in the provision
14 of services, products or facilities to an affiliate, or to the telecommunications utility's
15 or provider's own or an affiliate's retail department that sells to consumers.

16 **SECTION 12.** 196.219 (3) (m) of the statutes is amended to read:

17 196.219 (3) (m) Provide telecommunications service to any person acting as a
18 telecommunications utility, telecommunications provider, alternative
19 telecommunications utility or telecommunications carrier if the commission has
20 ordered the telecommunications utility or provider to discontinue service to that
21 person.

22 **SECTION 13.** 196.219 (4) of the statutes is amended to read:

23 196.219 (4) ENFORCEMENT. (a) On the commission's own motion or upon
24 complaint filed by the consumer, the commission shall have jurisdiction to take

1 administrative action or to commence civil actions against telecommunications
2 utilities or providers to enforce this section.

3 (b) The commission may, at its discretion, institute in any court of competent
4 jurisdiction a proceeding against a telecommunications utility or provider for
5 injunctive relief to compel compliance with this section, to compel the accounting and
6 refund of any moneys collected in violation of this section or for any other relief
7 permitted under this chapter.

8 **SECTION 14.** 196.219 (4m) of the statutes is renumbered 196.219 (4m) (a) and
9 amended to read:

10 196.219 (4m) (a) ~~Upon a finding of a violation of this section by the commission,~~
11 ~~any~~ Any person injured because of a violation of this section by a telecommunications
12 utility or provider may commence a civil action to recover damages or to obtain
13 injunctive relief.

14 **SECTION 15.** 196.219 (4m) (b) of the statutes is created to read:

15 196.219 (4m) (b) Upon request of the commission, the attorney general may
16 bring an action to require a telecommunications utility or provider to compensate
17 any person for any pecuniary loss caused by the failure of the utility or provider to
18 comply with this section.

19 **SECTION 16.** 196.219 (5) of the statutes is amended to read:

20 196.219 (5) ALTERNATE DISPUTE RESOLUTION. The commission shall establish by
21 rule a procedure for alternative dispute resolution to be available for complaints filed
22 against a telecommunications utility or provider.

23 **SECTION 17.** 196.43 (3) of the statutes is created to read:

24 196.43 (3) No injunction may be issued in any proceeding for review under ch.
25 227 of an order of the commission under s. 196.199 (3) (a), suspending or staying the

1 order, unless the court finds that the person seeking review of the order is likely to
2 succeed on the merits and suffer irreparable harm without the suspension or stay
3 and that the suspension or stay is in the public interest.

4 **SECTION 18.** 196.499 (1) of the statutes, as affected by 1997 Wisconsin Act 27,
5 is amended to read:

6 196.499 (1) SCOPE. Notwithstanding any other provisions of this chapter, a
7 telecommunications carrier is not subject to regulation under this chapter, except
8 that a telecommunications carrier shall comply with the requirements of this
9 section, shall be treated under s. 196.199 as a party to an interconnection agreement,
10 under ss. 196.209, 196.218 (8) ~~and~~, 196.219 (4d), 196.25 (3) and 196.65 (3) as a
11 telecommunications provider, under ~~s.~~ ss. 196.65 (3) (d) and 196.85 as a
12 telecommunications utility and under s. 196.858 as an interexchange
13 telecommunications utility, may be assessed under s. 196.218 (3) as a
14 telecommunications provider and shall respond, subject to the protection of the
15 telecommunications carrier's competitive information, to all reasonable requests for
16 information about its operations in this state from the commission necessary to
17 administer the universal service fund. A telecommunications carrier may not be
18 assessed in a manner that is inconsistent with this section.

19 (END)